

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

SHIRDENIA BRYANT, et al.	:	Civil Action No. C-1-02-006
Plaintiffs	:	(Judge Spiegel) (Magistrate Judge Sherman)
vs.	:	
PRESCOTT BIGELOW, IV, et al.	:	<u>DEFENDANTS'</u>
Defendants	:	<u>RESPONSE TO PLAINTIFFS'</u>
	:	<u>MOTION FOR LEAVE TO</u>
	:	<u>DEPOSE WITNESS AMY</u>
	:	<u>CLEMENTS</u>

* * * * *

Defendants, Prescott Bigelow, IV and Roseanne Christian hereby submit the following response to Plaintiffs' motion for leave to depose witness Amy Clements. (Doc. 43). As stated in Plaintiffs' motion, the discovery deadline of October 1, 2003, has expired. However, Plaintiffs' statement in their motion that "Plaintiffs had attempted to identify, locate and depose Ms. Clements long before discovery had expired but have been prevented from doing so" is not accurate. Ms. Clements is not an employee of either Defendant in this action. Defendants did not object to Ms. Clements' deposition. Ms. Clements is in St. Louis, Missouri. Ms. Clements indicated she did not wish to be deposed in person, but would give a telephone deposition, or respond to written questions (Lewis Aff., ¶ 7). The information concerning Ms. Clements whereabouts and her phone number was given to counsel for Plaintiffs well in advance of the discovery cutoff. It was Plaintiffs' obligation, not the Defendants, to make necessary arrangements for Ms. Clements' deposition, which Plaintiffs simply failed to do.

In further support of this response, Defendants submit the following, and the Affidavit of

Gary R. Lewis, attached hereto as Appendix A.

MEMORANDUM IN SUPPORT OF MOTION

By letter dated July 14, 2003, counsel for Plaintiffs requested the depositions of Prescott Bigelow IV, Paul Bigelow and Amy Clements (Lewis Aff., ¶ 2). Counsel for Defendants did not and does not represent either Paul Bigelow or Amy Clements. By letter dated July 17, 2003, counsel for Defendants sent a letter to Ms. Schwantes confirming he would make initial contact with these witnesses and advise that their depositions were being requested (Lewis Aff., ¶ 3). Paul Bigelow's deposition was taken on August 19, 2003.

On August 12, 2003, counsel for Defendants spoke with Mr. Schwantes regarding the deposition of Amy Clements. By letter dated August 13, 2003, counsel for Defendants advised Mr. Schwantes that he had spoken to Amy Clements and provided Mr. Schwantes with Ms. Clements residence address in Oxford, Ohio (Lewis Aff., ¶ 5). Mr. Schwantes was also advised in the August 12, 2003, letter that Ms. Clements was relocating to St. Louis, Missouri and would be there for several months. Clements' daughter was about to have a major surgery in St. Louis, Missouri and Ms. Clements was going to be with her daughter for an extended period of time (Lewis Aff., ¶ 5). Ms. Clements was not expected to be in the Cincinnati area before the end of 2003. Ms. Clements also indicated that she would not be opposed to a telephone deposition (Lewis Aff., ¶ ¶ 5, 7).

On September 10, 2003, Mr. Schwantes sent another letter to Defendants counsel regarding Ms. Clements. On September 12, 2003, counsel for Defendants responded to Mr. Schwantes September 10, 2003 letter. Counsel's September 12, 2003, letter reiterated to Mr. Schwantes that Ms. Clements was willing to give a telephone deposition or to respond in writing

to any written questions submitted to her. Mr. Schwantes was also provided with Ms. Clements' telephone number in St. Louis, Missouri (Lewis Aff., ¶ 7). After September 12, 2003, there was no further correspondence or contact from Plaintiffs' counsel regarding the deposition of Ms. Clements, until Plaintiffs' filed their current motion for leave to depose the witness.

It is not the responsibility of counsel for the Defendants to produce witnesses for the Plaintiffs. Ms. Clements was providing medical care for her daughter in St. Louis, Missouri. Ms. Clements offered to give a telephone deposition or to respond to written interrogatories. Plaintiffs did nothing in this regard, and apparently never bothered to contact Ms. Clements. Plaintiffs are now blaming the Defendants for Plaintiffs' failure to follow through on this discovery matter.

Defendants respectfully submit that the witness' wishes in this regard be honored, and that the deposition be conducted by telephone.

Respectfully Submitted,

Gary R. Lewis Co., L.P.A.

/s/ Gary R. Lewis
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CERTIFICATE OF SERVICE

I hereby certify that on November 14th, 2003, I electronically filed the foregoing Defendants' Response To Plaintiffs' Motion For Leave To Depose Amy Clements with the Affidavit of Gary R. Lewis, attached and served same upon William H. Blessing, Esq., Attorney for Plaintiffs, 119 East Court Street, Suite 500, Cincinnati, Ohio 45202 by regular U.S. Mail, postage pre-paid this 14th day of November, 2003.

/s/ Gary R. Lewis

Gary R. Lewis

Attorney for Defendant Prescott Bigelow and
Defendant Roseanne Christian